

REMARKS

By Preliminary Amendment filed April 22, 2005, claims 1-15, 17, 18, 21, 25, and 27-28 were amended and claims 16, 19-20, 22-23, 26, and 29 were cancelled.

Claims 24, 25, 27, and 28, being drawn to non-elected inventions, have been cancelled herein, without prejudice to the inclusion of the subject matter of the non-elected claims in any later filed application(s).

New claims 30-33 have been added herein prior to examination on the merits. These new claims are supported by the specification as filed, and therefore no new matter has been added by way of addition of these claims.

I. Restriction Requirement

Applicants hereby provisionally elect the invention of Group I (claims 1-15, 17, 18, and 21) "drawn to an isolated nucleic acid comprising a nucleotide sequence of the *dbv* gene cluster (SEQ ID NO:1) encoding the polypeptides required for the synthesis of A40926, a nucleotide sequence encoding the same polypeptide other than the *dbv* gene cluster, a nucleotide sequence of *dbv* ORFs 1-37 encoding a polypeptide of SEQ ID NOs:2-38, or a nucleotide sequence encoding any polypeptide of SEQ ID NOs:2-38 other than *dbv* ORFs 1-37; a recombinant vector comprising the DNA sequence; and a method for increasing production of A40926 by a microorganism using the recombinant vector." (Office Action mailed February 23, 2009, at page 2). This election is made without traverse.

II. Species Election Requirements

Pursuant to the selection requirement set forth at pages 3-4 of the Office Action, Applicants provisionally elect the amino acid sequence of SEQ ID NO:21 and the corresponding *dbv* ORF 20.

Applicants believe that claims 1, 2, 10, 14, 15, 17, 18, 21, and 30-33, read upon the selected species. It is understood that upon the allowance of a generic claim, Applicants will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim.

Applicants expressly reserve the right to file at a later date one or more divisional applications directed to the subject matter of the non-elected claims.

This Response is accompanied by a Petition for Extension of Time pursuant to 37 CFR § 1.136(a) together with the requisite fee therefor under 37 CFR § 1.17. Applicants believe that no additional fees are due with respect to the filing of this paper. However, if any additional fees are required in connection with the filing of this paper, the Commissioner is hereby authorized to charge Deposit Account Number 16-1445.

Summary

Applicants respectfully submit that each of claims 1-15, 17, 18, 21 and 30-33, is in condition for allowance. Favorable examination and allowance of these claims are respectfully requested at the earliest possible date.

In the event that there are any questions relating to this Response or to the application in general, the Examiner is requested to telephone the undersigned concerning such questions so that the prosecution of this application can be expedited.

Respectfully submitted,

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/Raquel M. Alvarez/
Raquel M. Alvarez, J.D., Ph.D.
Attorney for Applicants
Registration No. 45,807

Pfizer Inc.
Patent Department, MS8260-1611
Eastern Point Road
Groton, CT 06340
T (617) 551-3002

Via: **EFS**